IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICLATION NO.434 OF 2006
IN
COMPANY PETITION NO.1 OF 1982

Everest Fincap Pvt.Ltd. Applicant

versus

The Official Liquidator, being Liquidator of Bradbury Mills Ltd. (in liquidation) Respondent

Mr.T.S.Subramaniyam with Ms.Rajani Iyer i/by Mehta & Girdharlal for applicant.

Mr.D.D.Madon with Mr.Vishal Maheshwari i/by Nagandhi Shah and Himayatulla for HDFC.

Mr.S.H.Doctor with Mr.B.B.Parekh for Official Liquidator.

Mr.S.C.Gupta, O.O. present.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 27th April 2006

PC :

1. The applicant by this company application seeks a direction to the Official Liquidator to make disbursement of the amount to the workers, Employees State Insurance Corporation, Collector and to all creditors of the company whose claims have been adjudicated within a period of two

weeks. So also, the applicant seeks directions to make payment of Rs.54,67,014/- to the Municipal Corporation of Greater Bombay (for short "MCGB"). The other directions are to the effect that Letters of Attornment be issued by the Official Liquidator to the existing occupants or tenants that the tenants and occupants should cease to pay rents to the Official Liquidator, and should make such payments to the applicant. The Official Liquidator should be restrained from receiving or recovering rent or other charges from the tenants and/or occupants.

2. Prayer clause (f) of this company application reads thus :-

> "(f) That the Respondent be directed, by an order and direction of this Hon'ble Court to withdraw the letter addressed by the Respondent to the Registrar of Companies, referred to in Exhibit "EE" to the affidavit in support of this application, within two weeks or such other time as this Hon'ble Court may deem fit."

3. Ms.Iyer appearing in support of this application submits that the secured creditor United Commercial Bank had filed a suit against the company in liquidation on the basis of

mortgage of the securities more particularly described in the plaint and claimed a decree in its favour of a sum of Rs.13.00 crores and more. The said suit along with other suits, were instituted in this Court on the Original Side and applications were made for appointment of Court Receiver. In the mean while, on 27th January 1983, in Company Petition No.1 of 1982, Bradbury Mills Limited were ordered to be wound up and Liquidator was appointed with all powers under the provisions of Companies Act, 1956.

4. She makes a reference to the applications which were subject matter of an order passed by the Debts Recovery Tribunal, Mumbai (for short "DRT"). These applications are nothing but suits of secured creditors which were pending on the file of this Court and transferred to DRT, Mumbai, upon it’s establishment. She then invites my attention to the fact that the company in liquidation had an immovable property situate at 51, Maulana Azad Road, Gadge Maharaj Chowk, Mumbai and the applicant was approached by secured creditors for the purposes of disposal of this property. She then makes a reference to the valuation made of the properties by the United Commercial Bank and an application made to the

DRT upon which an order came to be passed on 31st March 2005. In other words, it is pursuant to this order that applicants' bid came to be accepted, the sale was confirmed in it's favour and all other compliance is made. She has drawn my attention to the fact that the applicant has made payment of the amount which has been mentioned in the affidavit in support of this company application. The conveyance has also been executed.

5. She has made reference to the adjudicated dues by the Official Liquidator and in that behalf she has invited my attention to several orders and directions which have been sought by the Official Liquidator and granted by this Court. She submits that a report was submitted by the Official Liquidator to this Court and learned Company Judge having noticed that the applicant has made payment of Rs.14 crores on 11th April 2005 and a further payment of Rs.54,67,014/-. It is now in the interest of justice that directions issued to pay the adjudicated dues. Insofar as the MCGB dues are concerned, she invites my attention to report which was submitted by the Liquidator and on which some directions were sought. In this

behalf she places reliance upon report submitted on 12th September 2005. In her submission, therefore, all adjudicated dues and MCGB dues, should be paid as there is a demand raised by the MCGB for payment of property taxes and other levies. She has also invited my attention to the earlier report of the Official Liquidator insofar as the tenants and payment of rents by them.

6. The Official Liquidator has filed an affidavit in reply to this application and he has invited my attention to the fact that in compliance with the provisions of Companies Act and the relevant rules, report was submitted to this Court by him and directions were sought to declare dividend to share holders/ preferential creditors. He also invited my attention to the fact that as far as payment of workers and the statutory dues, the Official Liquidator has taken prompt steps. He submits that as far as workers' dues are concerned, the position is as under :-

Details of Lists	Admitted Amount @ 100% (In Rs.)	Amount of Declaration of Dividend @ 40 paise in a rupee (In Rs.)	Date of orders of the Hon'ble Court.

Certified List of 2514 workers	4,79,98,829/-	1,91,99,571/-	4.8.95
1st Supple-mentary List of 26 workers	4,66,889/-	1,86,755/-	12.1.96
2nd Supple-mentary List of 35 workers	10,99,337/-	4,39,735/-	8.8.96
3rd Supple-mentary List of 20 workers	6,38,977/-	2,55,591/-	16.6.98
4th Supple-mentary List of 277 workers	44,08,743/-	17,63,497/-	25.2.04
2872 Workers	5,46,12,873/-	2,18,45,149/-	

7. He also points out that the MCGB has submitted one preferential claim on 8th August 2005 for a sum of Rs.2,36,38,603/-. This claim came some time in the year August 2005. Therefore, the Official Liquidator communicated to the MCGB that it should seek appropriate orders condoning delay. Thereupon, correspondence received and some interim

application was made before the DRT.. The issue as to whether the taxes payable to the MCGB have priority over all other dues, is now pending and the applications before the DRT and MCGB, are being contested by parties. However, she has pointed out that the MCGB has bifurcated the claim of property taxes to pre-liquidation and post-liquidation period. He submits that as far as pre-liquidation period is concerned, the same can be released by him. In respect of post-liquidation dues the issue will have to be decided in the pending applications before the DRT..

8. Shri Doctor - learned senior counsel appearing for the Official Liquidator has invited my attention to the basic and fundamental fact that the order of DRT dated 31st March 2005 sanctioning the sale of the immovable property, is subject matter of challenge before the DRT itself at the instance of another bidder/purchaser. Similarly, the Official Liquidator has also sought permission to file an appeal against the order dated 29th November 2005 which not only sets aside the earlier order of 31st March 2005 but observes that lapses have been committed by the Official Liquidator. In

the submission of Shri Doctor, a fraud is perpetrated on the DRT which is noted in the order dated 29th November 2005 and at the instance of the applicant/auction purchaser, this application should not be entertained. Save and except the dues which the Official Liquidator is obliged to pay in view of the Companies Act to the workers and to the statutory body (MCGB) in the manner referred to above, all other directions by the auction purchaser, cannot be sought from this Court. The application is not maintainable.

9. To appreciate rival contentions and since reliance is placed upon an order passed by this Court on the Official Liquidator's Report dated 12th September 2005, it is necessary to refer to the same.

10. As far as that report is concerned, the request of the Official Liquidator therein, is that pursuant to the orders of this Court dated 10th February 2005 permitting him to make payment of dividend @ 40 paise in a rupee to the workmen out of 2877 workmen, the compliance is made. He has made payment to all 2,877 workers as enlisted in the report. Thereafter, he makes reference to

the order of DRT and the auction purchaser namely the present applicant. He admits that a sum of Rs.14 crores is lying to the credit of the company in liquidation. He thereafter makes a reference to an undertaking which is given by the applicant for making payment of balance dues of workers and other statutory liabilities. Thereafter, a reference is made to an earlier order passed by the Company Judge on 17th February 2004 in Company Application No.312 of 2001. He has referred to the pending claims of about 63 workers and a provision being made by him. Similarly, preferential claims which have been adjudicated and admitted by him, are also set out. Thereafter, he refers to the notice/demand from the MCGB and in these circumstances, seeks reliefs which are at the end of the report namely to make payment of adjudicated certified claims as also admitted claims and whether he can call for further amounts from the applicant.

11. On this report, this Court on 15th September 2005 passed the following order :-

> "1. No objection is raised with regard to reliefs sought by the Official

Liquidator in his report dated 12th September 2005 insofar as clauses (a), (b), (d) and (e) are concerned.

2. Counsel for the workers, however, submit that the Official Liquidator be directed to disburse the amount within specified time. The Official Liquidator informs that this apprehension overlooks the relief sought in terms of prayer clause (e) which takes care of the time period in which the amount will have to be paid to the workers. Accordingly, relief in terms of clauses (a), (b), (d) and (e) as prayed for granted.

3. Insofar as prayer clause (c) is concerned, Counsel for M/s.Everest Fincap Pvt. Ltd. submits that the sale in respect of the immovable property has been confirmed in favour of M/s.Everest Fincap Pvt. Ltd. for a total consideration of Rs.44,00,00,000/- (Rupees Forty-four crores) and it will not be liable to pay any amount towards outgoings regarding the property to the Municipal Corporation. This submission, however, cannot be accepted in view of the clear undertaking given on behalf of the M/s.Everest Fincap Pvt.Ltd. before the Debts Recovery Tribunal as recorded in the order dated 31st March 2005 below Exhibit 157 in O.A. No.124 of 2001 at Exhibit E to the report. In para 3 of the said order, it is recorded that sum of Rs.54,67,014/- Rupees Fifty-four Lakhs Sixty-seven Thousand Fourteen) is payable to Municipal Corporation in respect of the lands sold to M/s.Everest Fincap Pvt.Ltd. and that M/s.Everest Fincap Pvt.Ltd. has undertaken to pay the said amount to the Official Liquidator as also future liability, if any, to be adjudicated by the Corporation.

4. In the circumstances, M/s.Everest Fincap Pvt.Ltd. is directed to deposit sum of Rs.54,67,014/- (Rupees Fifty-four lakhs Sixty-seven Thousand Fourteen) with the Official Liquidator, which can be made over to the Corporation. Counsel for M/s.Everest Fincap Pvt.Ltd., however, submits that the said Company intends to

> seek clarification from the Debts Recovery Tribunal.
>
> 5. Without expressing any opinion on such course to be adopted, M/s.Everest Fincap Pvt.Ltd. is directed to deposit the amount as aforesaid within the Official Liquidator, forthwith, not later than 30th September 2005. In case, any orders are obtained by M/s.Everest Fincap Pvt.Ltd. appropriate directions can be given to the Official Liquidator, consistent with the said orders."

12. Thus, the applicant has appeared before this Court at the hearing of this report and after making submissions as also expressing its willingness to deposit the amounts, the report has been made absolute in terms of this order. The order is very clear inasmuch as what the applicant was seeking to do is to comply with the terms and conditions of sale imposed by the DRt.. The applicant has also expressed it’s readiness and willingness to make payment of Rs.54,67,014/- to the Official Liquidator by reserving it’s right to seek clarification from the DRT in that behalf. It is in these circumstances that the order was passed to deposit the amount.

13. In my view, the contents of this report as also the further report dated 16th February 2006 would not be of any assistance to the applicant insofar as other relief, which are directed

towards tenants and occupants of the structure on the land/immovable property. Since the sale is by the DRT and the terms and conditions have been finalised by the DRT, the applicant should move the DRT and seek appropriate reliefs as far as these aspects are concerned. Since the Official Liquidator is also party to the proceedings before the DRT, no orders can be issued in that behalf. Equally, it would be open for the applicant to adopt appropriate proceedings against the tenants/ occupants for recovery of amounts which are due and payable as and by way of rent/compensation. This Court's jurisdiction under the Companies Act is restricted and it is not permissible for it to issue directions to the tenants and occupants. More so, when they are not before this Court in these proceedings. The entire attempt of the applicant appears to be to give finality to proceedings for sale of the subject immovable property. The sale is pursuant to orders of DRT.. Now, the DRT has set aside its earlier order dated 31st March 2005. The matter is before DRAT.. The applicant cannot set at naught these proceedings and rights of parties, including Official Liquidator therein.

14. As far as monies which have been deposited

by the applicant with the Official Liquidator pursuant to the orders passed by this Court, the Official Liquidator having sought this Court's directions, it is for the Official Liquidator to make payment in terms of the said order and directions. In any event, the Official Liquidator has made a report and orders on which have been passed by me today granting him extension to make payment to the workers. That aspect will have to be noted and the payments made in accordance with law. Therefore, as far as prayer clause (a) of the Company Application is concerned, the Liquidator will have to make disbursement of the amounts due to the workers and other statutory authorities in accordance with law.

15. As far as claim of MCGB is concerned, since part of the amount i.e. pre-liquidation period is agreed to be disbursed by the Official Liquidator and a statement is made on affidavit in that behalf, it is not necessary to issue any directions, save and except observing that the Official Liquidator to make payment to the MCGB of Rs.28,40,820/- without prejudice to the rights and contentions of the applicant as well as Official Liquidator and MCGB in the pending DRT

proceedings.

16. Since the matter is pending before the DRT and even Official Liquidator has sought leave of this Court to initiate proceedings which has been granted, in my view, it will not be proper to grant other prayers and liberty as above, is always reserved to the applicant to initiate proceedings in that behalf. Insofar as additional relief sought of furnishing of copies of letters which have been addressed by the Official Liquidator to various statutory bodies, in my view, appropriate course would be to direct the Official Liquidator to furnish to the applicant or their advocate, copies of the correspondence which has been carried out by him with the MCGB and the Rashtriya Mill Mazdoor Sangh as well as Urban Land Ceiling authorities. It is after this correspondence is made available, that the applicant can seek appropriate directions to the Official Liquidator to withdraw unconditionally all letters and/or to grant them no objection certificate to proceed and seek the approval of their plans. All contentions of both sides in that behalf are expressly kept open. Merely furnishing of copies of this correspondence, would not mean that the

Official Liquidator is bound to grant the no objection certificate.

17. My attention is also invited to a letter passed by this Court on 16th February 2006. That order is very clear inasmuch as the applicant has opposed the request of the Official Liquidator and sought implementation of the orders passed by this Court on 15th September 2005 and 30th September 1995. Report of the Official Liquidator which was submitted to the learned Company Judge, was answered in negative and it was observed that all payments from the amounts deposited by the successful bidders with the Official Liquidator, shall not prejudice the rights and contentions of the Official Liquidator in the Appeal filed before the DRAT.. It was specifically observed that it will not be open for the auction purchaser to claim any equities on the basis of disbursement already made.

18. The applicants are, therefore, clearly bound by the orders passed in September 2005 and this order. They cannot while making payments and seeking disbursement of the payments of the workers and statutory bodies, seek a direction that the Official Liquidator must not exercise

his powers with regard to the properties and assets of the company in liquidation in accordance with Companies Act, 1956. All other reliefs which have sought in the company application, can be sought by the applicant in proceedings before the DRT and/or by a substantive suit, qua, the tenants/occupants.

19. The company application is, therefore, disposed of by directing the Official Liquidator to make payments to the workers as per the orders passed by this Court earlier and within the time stipulated in my order passed today. Similarly, he shall release a sum of Rs.28,40,820/- to MCGB without prejudice to his right and contentions. All orders and directions are without prejudice to the rights and contentions of Official Liquidator in pending proceedings before DRT/DRAT.. They shall also not prevent him from acting in furtherance of the permission granted by this Court to initiate appropriate proceedings.

(S.C.DHARMADHIKARI, J.)